IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5949 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHLAL MANILAL VORA

Versus

STATE OF GUJARAT

Appearance:

MR JA ADESHRA for Petitioner

Mr. S.T. Mehta, APP for Respondent No. 1

MR PN BAVISHI for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/12/2000

ORAL JUDGEMENT

Rule. Learned Advocate Mr. P.M. Bavishi waives service of rule on behalf of the respondent no.2. Learned

A.P.P. Mr. S.T. Mehta waives service of rule on behalf of the respondent no.1-State.

1. The applicant has prayed to quash and set aside the Criminal Case no.410/99 pending in the Court of learned J.M.F.C., Surendranagar.

2. The present respondent no.2 has filed Criminal Case no.410/99 in the Court of Chief Judicial Magistrate, Surendranagar under Sec.138 of the Negotiable Instruments Act, 1881(hereinafter referred to as " the Act" for short) on the allegation that the accused nos.1 to 6 as a partner of M/s. Rupal Porcelain Insulators firm had issued cheque bearing no.1543198 dated 1-2-99 drawn on Surendranagar Mercantile Cooperative Bank for the amount of Rs.1,50,000/- towards the payment of amount advanced by the present respondent no.2 to the said firm on 1st January, 1999. That the said cheque when deposited in bank had returned dishonoured on 10th March, 1999 with the endorsement of "insufficient funds" for which a demand notice dated 23-4-1999 was issued and as the same was not complied with, complaint is filed. The present petitioner-Hasmukhlal Manilal Vora is the accused no.1 of Criminal Case no.410/99 as partner of M/s. Rupal Porcelain Insulators firm.

That the Court of Chief Judicial Magistrate, Surendranagar issued summons against the present petitioner as the accused no.1 and on his appearance proceeded with the matter by recording the deposition of complainant (the present respondent no.2). That during the pendency of the said proceedings before the trial Court, the present petitioner made payment of Rs.1,40,000/- to the respondent no.2 towards the outstanding dues of the disputed cheque and promised to pay remaining amount. However, before the said payment could take place the negotiated settlement could not take place, and as such, the petitioner has challenged the said proceedings on numerous grounds. On issuance of notice, the respondent no.2 has appeared through Advocate in this Court.

3. During the hearing for admission, the respondent no.2 was personally present and the petitioner was directed to remain present in the Court with remaining amount of Rs.10,000/- alongwith accrued interest at 18% on the amount of the cheque so as to discharge the due liability in respect to cheque which was dishonoured on which the impugned criminal case is based.

4. Today, the petitioner alongwith his learned

Advocate is present and has brought the amount of Rs.10,000/- alongwith another amount of Rs.25,466.29Ps being the amount of interest computed at the rate of 18% per annum on the cheque amount of Rs.1,50,000/- from the date of dishonour till today. However, as the respondent no.2 is not present, the learned Advocate for the respondent no.2 has requested to keep the amount deposited in this Court so that payment could be made to the respondent no.2 as and when he comes to the Court.

5. Learned Advocate Shri P.N. Bavishi appearing for the respondent no.2 had stated that he has no instruction to withdraw the complaint, and as such, even if the due amount with accrued interest is paid by the petitioner, complaint cannot be quashed.

6. It would be pertinent to note that the petitioner has averred in the petition vide paragraphs 7 to 12 that during the trial of Criminal Case no.410/99, the respondent no.2 negotiated settlement with the petitioner and accepted, in all, an amount of Rs.1,40,000/- out of the cheque amount of Rs.1,50,000/-. Not only that, complainant has acknowledged the said amount and has issued the receipt, copies of which are produced on record vide Exhs.35, 36, 37 and 38 at Annexure "C" "D", "E" and "F" respectively to the petition. It is also averred in the petition that as per the settlement on payment of remaining Rs.10,000/-, the respondent no.2 as complainant of Criminal Case no.410/99 was to withdraw the same. That the respondent no.2 though has appeared has failed to file any affidavit-in-reply to controvert the said statement, and as such, there is no reason to disbelieve the fact apparent from the averments made in the petition which are verified on oath. In view of the said fact situation, it clearly appears that the respondent no.2 and the petitioner had agreed to settle the dispute of payment of outstanding dues by the petitioner and to withdraw the complaint. However, having received major part of the amount to the extent of Rs.1,40,000/-, if the respondent no.2 does not accept the remaining amount of Rs.10,000/- with accrued interest as permissible under the law and if he is not agreeable to withdraw the complaint against the petitioner, the conduct of the petitioner cannot be said to be just, proper or reasonable. As a matter of fact, as per the terms of compromise, placed on record before the trial Court, the respondent no.2 is estopped from not withdrawing the complaint on receipt of due amount of cheque with accrued interest at the rate of 18 per cent per annum as permissible under the Negotiable Instruments Act. Furthermore, if the said amount is paid to the

respondent no.2 and having accepted the amount under the guise of negotiated settlement, if the respondent no.2 insists for further prosecution of the complaint against the petitioner, it would amount to abuse of process of Court, and as such, proceedings of Criminal Case no.410/99 is liable to be quashed and set aside on fulfillment of the promise given by the petitioner to the respondent no.2 pursuant to negotiated settlement.

7. In the context of the above stated peculiar facts situated, the following operative orders are passed:

(a) An amount of Rs.35,446.29Ps be paid by the learned Advocate Mr. J.A. Adeshra representing the petitioner to Advocate Mr. P.N. Bavishi representing the respondent no.2 on Advocate Mr. B.N. Bavishi giving a valid receipt of having received the said amount on behalf of the respondent no.2. That the learned Advocate for the respondent no.2 shall arrange to make the payment of the said amount to the respondent no.2 in due discharge of the liability of the disputed cheque bearing no.1543198 dated 1-2-1999 drawn by the present petitioner on behalf of M/s. Rupal Porcelain Insulators firm on Surendranagar Mercantile Cooperative Bank, Surendranagar in favour of the respondent no.2.

(b) The learned Advocate Mr. P.N. Bavishi is directed to tender on record the receipt in respect to the payment made to him by the respondent no.1, under this order, on behalf of the respondent no.2.

8. On the basis of the aforesaid arrangement, as no case for further prosecution of Criminal Case no.410/99 survive, in the interest of justice, the impugned complaint Annexure "A" is hereby quashed and set aside.

Rule is made absolute to the aforesaid extent.

(A.K.Trivedi,J.)

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